



[7590-01-P]

## **NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 170 and 171**

**RIN 3150-AJ19**

**[NRC-2012-0211]**

### **Revision of Fee Schedules; Fee Recovery for Fiscal Year 2013**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in Fiscal Year (FY) 2013, not including amounts appropriated for Waste Incidental to Reprocessing (WIR) and amounts appropriated for generic homeland security activities. The President signed the Consolidated and Further Continuing Appropriations Act of 2013 on March 26, 2013, giving the NRC a total appropriation of \$985.6 million for FY 2013. The NRC's required fee recovery amount for the FY 2013 budget is approximately \$864.0 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately \$859.6 million.

**DATES:** This final rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION]**.

**ADDRESSES:** Please refer to Docket ID NRC-2012-0211 when contacting the NRC about the availability of information for this final rule. You may access information related to this final rule, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0211. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

- **NRC's Agencywide Documents Access and Management System**

**(ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search.](#)" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, "Availability of Documents."

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1481, e-mail: [Arlette.Howard@nrc.gov](mailto:Arlette.Howard@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background.
- II. Response to Comments.
- III. Final Action.
  - A. Amendments to Part 170 of Title 10 of the *Code of Federal Regulations* (10 CFR): Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended.
  - B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.
- IV. Plain Writing.
- V. Availability of Documents.
- VI. Voluntary Consensus Standards.
- VII. Environmental Impact: Categorical Exclusion.
- VIII. Paperwork Reduction Act Statement.
- IX. Regulatory Analysis.
- X. Regulatory Flexibility Analysis.
- XI. Backfitting and Issue Finality.
- XII. Congressional Review Act.

## **I. Background.**

Over the past 40 years the NRC (and earlier as the Atomic Energy Commission (AEC), the NRC's predecessor agency), has assessed and continues to assess fees to applicants and licensees to recover the cost of its regulatory program. The NRC's cost recovery principles for fee regulation are governed by two major laws, the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483(a)) and OBRA-90 (42 U.S.C. 2214), as amended. The NRC is required each year, under OBRA-90, as amended, to recover approximately 90 percent of its budget authority, not including amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The following discussion explains the various court decisions, congressional mandates and Commission policy which form the basis for the NRC's current fee policy and cost recovery methodology, which in turn form the basis for this rulemaking.

### **Establishment of fee policy and cost recovery methodology**

In 1968, the AEC adopted its first license fee schedule in response to Title V of the IOAA. This statute authorized and encouraged Federal regulatory agencies to recover to the fullest extent possible costs attributable to services provided to identifiable recipients. The AEC established fees under 10 CFR part 170 in two sections, §§ 170.21 and 170.31. Section 170.21 established a flat application fee for filing applications for nuclear power plant construction permits. Fees were set by a sliding scale depending on plant size; for construction permits and operating license fees, and annual fees were levied on holders of Commission operating licenses under 10 CFR part 50. Section 170.31 established application fees and annual fees for materials licenses. Between 1971 and 1973, the 10 CFR part 170 fee schedules were adjusted to account for increased costs resulting from expanded services which included health and

safety inspection services and manufacturing licenses and environmental and antitrust reviews. The annual fees assessed by the Commission began to include inspection costs and the material fee schedule expanded from 16 to 28 categories for fee assessment. During this period, the schedules continued to be modified based on the Commission's policy to recover costs attributable to identifiable beneficiaries for the processing of applications, permits and licenses, amendments to existing licenses, and health and safety inspections relating to the licensing process.

On March 4, 1974, the U.S. Supreme Court rendered major decisions in two cases, *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974), regarding the charging of fees by Federal agencies. The Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The Court, therefore, invalidated the Federal Power Commission's annual fee rule because its fee structure assessed annual fees against the regulated industry at large without considering whether anyone had received benefits from any Commission services during the year in question. As a result of these decisions, the AEC promptly eliminated annual licensing fees and issued refunds to licensees, but left the remainder of the fee schedule unchanged.

In November 1974, the AEC published proposed revisions to its license fee schedule (39 FR 39734; November 11, 1974). The Commission reviewed public comments while simultaneously considering alternative approaches for the proper evaluation of expanding services and proper assessment based upon increasing costs of Commission services.

While this effort was under way, the Court of Appeals for the District of Columbia issued four opinions in fee cases—*National Cable Television Assoc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. FCC*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic*

*Industries Association v. FCC*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc. v. FCC*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions invalidated the license fee schedules promulgated by the Federal Communications Commission, and they provided the AEC with additional guidance for the prompt adoption and promulgation of an updated licensee fee schedule.

On January 19, 1975, under the Energy Reorganization Act of 1974, the licensing and related regulatory functions of the AEC were transferred to the NRC. The NRC, prompted by recent court decisions concerning fee policy, developed new guidelines for use in fee development and the establishment of a new proposed fee schedule.

The NRC published a summary of guidelines as a proposed rule (42 FR 22149; May 2, 1977), and the Commission held a public meeting to discuss the summary of guidelines on May 12, 1977. A summary of the comments on the guidelines and the NRC's responses were published in the *Federal Register* (43 FR 7211; February 21, 1978).

The U.S. Court of Appeals for the Fifth Circuit upheld the Commission's fee guidelines on August 24, 1979, in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that --

1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

- 4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;
- 5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and
- 6) The NRC's fees were not arbitrary or capricious.

### **The NRC's current statutory requirement for cost recovery through fees**

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act (COBRA) (H.R. 3128), which required the NRC to assess and collect annual charges from persons licensed by the Commission. These charges, when added to other amounts collected by the NRC, totaled about 33 percent of the NRC's estimated budget. In response to this mandate and separate congressional inquiry on NRC fees, the NRC prepared a report on alternative approaches to annual fees and published the decision on annual fees for power reactor operating licenses in 10 CFR part 171 for public comment (51 FR 24078; July 1, 1986). The final rule (51 FR 33224; September 18, 1986) included a summary of the comments and the NRC's related responses. The decision was challenged in the D.C. Circuit Court of Appeals and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

In 1987, the NRC retained the established annual and 10 CFR part 170 fee schedules in the *Federal Register* (51 FR 33224; September 18, 1986).

In 1988, the NRC was required to collect 45 percent of its budget authority through fees. The NRC published a proposed rule that included an hourly increase recommendation for public comment in the *Federal Register* (53 FR 24077; June 27, 1988). The NRC staff could not properly consider all comments received on the proposed rule. Therefore, on August 12, 1988,

the NRC published an interim final rule in the *Federal Register* (53 FR 30423). The interim final rule was limited to changing the 10 CFR part 171 annual fees.

In 1989, the Commission was required to collect 45 percent of its budget authority through fees. The NRC published a proposed fee rule in the *Federal Register* (53 FR 24077; June 25, 1988). A summary of the comments and the NRC's related responses were published in the *Federal Register* (53 FR 52632; December 28, 1988).

On November 5, 1990, with respect to 10 CFR part 171, the Congress passed OBRA-90, requiring that the NRC collect 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund (NWF), through the assessment of fees. The OBRA-90 allowed the NRC to collect user fees for the recovery of the costs of providing special benefits to identifiable applicants and licensees in compliance with 10 CFR part 170 and under the authority of the IOAA (31 U.S.C. 9701). These fees recovered the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. The OBRA-90 also allowed the NRC to recover annual fees under 10 CFR part 171 for generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. In compliance with OBRA-90, the NRC adjusted its fee regulations in 10 CFR parts 170 and 171 to be more comprehensive without changing their underlying basis. The NRC published these regulations in a proposed rule for public comment in the *Federal Register* (54 FR 49763; December 1, 1989). The NRC held three public meetings to discuss the proposed changes and questions. A summary of comments and the NRC's related responses were published in the *Federal Register* (55 FR 21173; May 23, 1990).

In FYs 1991 – 2000, the NRC continued to comply with OBRA-90 requirements in its proposed and final rules. In 1991, the NRC's annual fee rule methodology was challenged and upheld by the D.C. Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

The FY 2001 Energy and Water Development Appropriation Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005.

The FY 2006 Energy and Water Development Appropriation Act extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007.

In addition to the requirements of OBRA-90, as amended, the NRC was also required to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. This Act encouraged small businesses to participate in the regulatory process, and required agencies to develop more accessible sources of information on regulatory and reporting requirements for small businesses and create a small entity compliance guide. The NRC, in order to ensure equitable fee distribution among all licensees, developed a fee methodology specifically for small entities that consisted of a small entity definition and the Small Business Administration's most common receipts-based size standards as described under the North American Industry Classification System (NAICS) identifying industry codes. The NAICS is the standard used by Federal statistical agencies to classify business establishments for the purposes of collecting, analyzing, and publishing statistical data related to the U.S. business economy. The purpose of this fee methodology was to lessen the financial impact on small entities through the establishment of a maximum fee at a reduced rate for qualifying licensees.

In FY 2009, the NRC computed the small entity fee based on a biennial adjustment of 39 percent, a fixed percent applied to the prior 2-year weighted average for all fee categories that have small entity licensees. The NRC also used 39 percent to compute the small entity annual fee for FY 2005, the same year the agency was required to recover only 90 percent of its budget authority. The methodology allowed small entity licensees to be able to predict changes in their

fees in the biennial year based on the materials users' fees for the previous 2 years. Using a 2-year weighted average lessened the fluctuations caused by programmatic and budget variables within the fee categories for the majority of small entities.

The agency also determined that there should be a lower-tier annual fee based on 22 percent of the maximum small entity annual fee to further reduce the impact of fees. In FY 2011, the NRC applied this methodology which would have resulted in an upper-tier small entity fee of \$3,300, an increase of 74 percent or \$1,400 from FY 2009, and a lower-tier small entity fee of \$700, an increase of 75 percent or \$300 from FY 2009. The NRC determined that implementing this increase would have a disproportionate impact upon small entity licensees and performed a trend analysis to calculate the appropriate fee tier levels. From FY 2000 to FY 2008, \$2,300 was the maximum upper-tier small entity fee and \$500 was the maximum lower-tier small entity fee. Therefore, in order to lessen financial hardship for small entity licensees, the NRC concluded that for FY 2011, \$2,300 should be the maximum upper-tier small entity fee and \$500 should be the lower-tier small entity fee.

## **II. Response to Comments.**

The NRC published the FY 2013 proposed fee rule on March 7, 2013 (78 FR 14880), to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. By the close of the comment period (April 8, 2013), the NRC received responses from nine commenters that were considered in this final rulemaking. The majority of the comments were received from the uranium industry, nuclear power industry, and the general public. The comments have been grouped by issues and are addressed in a collective response.

### ***A. Specific 10 CFR Part 170 Issues.***

#### **1. Hourly Rate.**

*Comment.* The NRC staff received several comments from the uranium industry, nuclear power industry, and general public concerning the increase in the hourly rate. Some commenters expressed concern that the increase in the hourly rate and the large number of hours expended by the Commission staff on reviews, especially environmental reviews, has resulted in very large invoices to licensees. One commenter is concerned that the FY 2013 hourly rate is 16 percent higher than the rate charged in 2008, twice the rate of inflation since 2008. The commenter also stated the NRC should be concerned about the impact of cumulative hourly rate increases on all classes of licensees. One commenter expressed concern regarding the NRC's lack of cost containment, which the commenter believes is evident based on the number of hourly charges leading to 90 percent fee recovery for escalating uranium recovery activities. Another commenter stated that the NRC should revise the proposed rule to require more efficient processing services of services subject to hourly fees since this proposed rulemaking fails to promote opportunities for cost containment. The same commenter stated the the NRC should establish typical timeframes for activities and promote use of deadline and cost estimates even if preliminary to reduce hourly fees and provide for more timely actions by the NRC. Another commenter is concerned about the high hourly rate along with a large number of hours charged which results in larger invoices. One commenter stated that the NRC should identify the hourly rate as it pertains to charges for its oversight staff (direct overhead), the burden rate placed on all onsite staff, and the burden overhead rate or additional contract staff which is charged to owners.

*Response.* Regarding the hourly rate increase and the large number of hours expended by the Commission staff on reviews, especially environmental reviews which result in larger invoices due to the lack of cost containment, the NRC disagrees with this comment. The number of hours spent on NRC reviews, including environmental reviews, is commensurate with the complexity of the subject matter and the quality of the applicant's submittal. The NRC has

developed an efficient process for the review of uranium recovery applications. Time expended by the staff to review license applications is necessary to ensure that uranium recovery operations are in compliance with the NRC's regulations and are protective of public health, safety, and the environment. The staff has developed strategies to reduce review times, such as the pre-submission review that have substantially improved application quality and, consequently, shortens review times. If industry has further suggestions, the staff is amenable to meeting with industry in a public forum to discuss details regarding our review process.

Regarding the comment that the FY 2013 hourly rate is 16 percent higher than the rate charged in 2008, twice the rate of inflation since 2008, including impact of cumulative hour rate increases on all licensees, the NRC acknowledges this comment. However, the hourly rate is not based on the inflation rate but calculated using established fee methodology in compliance with OBRA-90, as amended, which requires the NRC recover 90 percent of its budget authority through the collection of fees assessed to licensees. The NRC is committed to ensuring the hourly rate, to the maximum extent practicable, reflects the cost of NRC services to licensees, in a manner which is fair and equitable to all licensees.

Regarding the comment expressing concern about the lack of cost containment, the NRC disagrees with this comment. Cost containment is not a viable option for the NRC because, as stated above, the NRC is required by law to collect 90 percent of its budget authority through user fees. The NRC staff has implemented efficient review processes to ensure that these fees are fairly allocated. The staff charges the hours necessary to complete its actions and makes a considerable effort to only charge productive hours to a licensee or applicant. Resources expended by the staff are required to draw the necessary safety and environmental conclusions. Overall, additional efficiencies can be achieved by closer NRC and industry coordination prior to application submittal to ensure high quality applications.

Additionally, high quality and complete responses to requests for additional information also ensure an efficient and timely review process.

Regarding the comment requesting that the NRC require more efficient processing services subject to hourly fees, the NRC disagrees with this comment. As previously mentioned, the staff constantly searches for methods to increase efficient processing of services, such as the pre-submission review, which has improved application quality and review efficiency. The staff also has increased its environmental review efficiency by using the Generic Environmental Impact Statement (GEIS), starting its Section 106 cultural and historic resource consultations earlier, and using alternate approaches to cultural and historic resource surveys.

In reference to the comment stating that the NRC should provide typical timeframes for activities, establish deadlines and prepare cost estimates to reduce hourly fees resulting in timely actions by the NRC, the staff already provides estimated costs and schedules. The staff has provided to industry its estimate for completing a new license or expansion review in January 2011 and May 2013. These estimates were presented during conferences, the latest being the 2013, National Mining Association, Uranium Recovery Workshop. The staff also presented tentative schedules on the NRC's Web site, [www.nrc.gov](http://www.nrc.gov), and updates the schedules, as needed. Licensees can also expedite the processing of their applications by ensuring applications submitted are of high quality and requests for additional information are submitted with complete information in a timely manner.

Regarding the comment that the NRC should identify the hourly rate as it pertains to charges for its oversight staff (direct overhead), the burden rate placed on all onsite staff, and the burden overhead rate or additional contract staff which is charged to owners, the NRC disagrees with this comment. The NRC charges one hourly rate to licensees which is computed by dividing the sum of the recoverable budgeted resources for mission direct program salaries and benefits, mission indirect program support, agency corporate support and the Inspector

General (IG), by mission direct full time equivalents (FTE) hours. The mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee relief activities. See Section III.A, Amendments to Part 170 of Title 10 of the *Code of Federal Regulations*, Table II - Hourly Rate Calculation. Lastly, the calculation of differing burden rates would be administratively burdensome and not provide any further benefit to the licensees.

## 2. Flat Fees.

*Comment.* One commenter stated that the NRC should establish more flat fees for activities at uranium recovery operations. The same commenter stated that although the NRC does not have the information such as number of hours and typical timeframes for routine activities, the NRC's goal should be to move to flat fees for routine activities. The commenter further stated that flat fees would allow the industry to better plan and budget.

*Response.* The NRC disagrees with these comments. In FY 2012, the staff considered creating more flat fees but determined it was not feasible due to the complexity of determining fair and equitable rates for sites that have significant variances in the work required for similar regulatory activities. The staff's assessment involved preparing a list of over 20 amendments and reviews typically undertaken for uranium recovery licensees and examining costs associated with these activities. The staff reviewed the data and determined it was insufficient and more resources would be required to identify specific tasks and develop corresponding flat fees. In FY 2013, the NRC continues to operate under a challenging budget environment; therefore, the NRC staff has delayed this activity in order to focus on other high-priority program activities. However, the staff will again assess this possibility in FY 2014.

### 3. Lack of Invoice Detail.

*Comment.* One commenter stated that the NRC should continue efforts to provide invoices that contain more meaningful descriptions of the work done by staff and especially contractors.

*Response.* The NRC agrees with this comment. In FY 2011, the NRC requested feedback from industry on a new invoice format to balance the need for a sufficient level of detail for industry without causing an undue burden on the NRC or the licensees. Based on the feedback, the NRC created an invoice for inspection reports which provided the number of hours charged by pay period (two weeks), a short description of the activity and an assigned billing code (TAC). Upon request by the licensee, the NRC can provide more detail which includes the full name of the NRC staff member including time charged for a specific activity. The NRC encourages licensees and applicants to contact their assigned Project Manager if additional detail is required on the work that is being performed on their behalf.

### B. *Specific Part 171 Issues.*

#### 1. Uranium Recovery Fees.

*Comment.* Two commenters expressed concern on how proposed rulemaking activities contributed to increases in uranium recovery fees. One commenter stated that the uranium recovery industry has not seen much rulemaking activity in the past 12 months and requested estimates of future rulemaking cost-related to uranium recovery projects be provided to industry. The same commenter stated the proposed increased fee for 11e(2) disposal incidental to existing tailing sites is not proportionate to increases for conventional and heap leach mills, basic *In Situ* Recovery (ISR) facilities or expanded ISR facilities all of which slightly exceed 21 percent. Another commenter noted that the NRC explained increases in uranium recovery fees are due to rulemaking and licensing board activities, yet they are unaware of any ongoing rulemaking activities which would justify an increase in uranium recovery fees.

*Response.* Regarding the comments on how proposed rulemaking activities contributed towards increased uranium recovery fees, the NRC agrees with these comments. The staff planned on undertaking an ISR rulemaking at the time the budget was developed in FY 2011. However, due to the FY 2013 Appropriation and sequestration, funds for this rulemaking have been removed from the budget. The NRC staff has reflected this reduction in the final annual fees.

Regarding the comment requesting estimates of future rulemaking costs for the uranium recovery program to be submitted to industry, the NRC disagrees with this comment. Preliminary estimates for rulemaking costs submitted for budget formulation and annual fee calculations are for internal use only. Furthermore, these estimates are subject to change throughout the budget formulation process. Therefore, agency estimates provided to industry could be inaccurate, until the budget is approved by Congress.

The FY 2013 budget also includes additional resources for licensing board activities anticipated for at least five new facility or expansion applications. Licensing board activities could include addressing standing and contentions, preparing and responding to appeals, and providing testimony in various phases of hearings. Since uranium recovery hearings are contested, these costs are not directly billed to specific licensees, except if the contested hearing involves an action related to the U.S. Government's national security-related initiative. Therefore, the agency must recovery these funds through annual fees.

In reference to the comment stating the proposed increased fee for 11e(2) disposal incidental to existing tailing sites is not proportionate to increases for conventional and heap leach mills, basic *in situ* recovery facilities or expanded *in situ* recovery facilities all of which slightly exceed 21 percent, the NRC disagrees with this comment. The staff apportions the uranium recovery annual fee based on the number of licensees in each fee class and on the

relative amount of time required to manage the licensees in each fee class. In addition to the budgetary resources increase for category 11e(2), the benefit factor between FY 2012 and FY 2013 had a slight increase due to operations. The resulting annual fee is the result of this calculation; however, the staff notes that the annual fee under this class is significantly lower than those of the other fee classes, except uranium water treatment facilities.

## C. Other Issues.

### 1. Streamlining Processes.

*Comment.* Two commenters stated the NRC should investigate ways to reduce fees through efficient use of resources and streamlining regulatory processes, particularly to accomplish legal and policy imperatives. One commenter stated they can assist the NRC in achieving streamlining efficiencies, budgeting for future initiatives, providing timely results and processing existing license maintenance activities over new applications if resource constraints limits the NRC's ability to accomplish these tasks. The same commenter stated they can help the NRC obtain additional resources by continued communication with the Commission or contacting Congress to support additional resources for uranium recovery. Another commenter requested the information regarding the subject of design certification requests, in the form of petitions for rulemaking with designs for certain common features such as central plants, satellite plants, wells, header houses and ponds, be provided to the uranium recovery industry. The same commenter stated that upon receipt of this information, time and costs related to these designs be described. The commenter also stated use of standardized and pre-approved designs can streamline the licensing process. One commenter stated that the NRC ensure that the GEIS and the Memorandum of Understanding (MOU) between the Commission and the Bureau of Land Management (BLM) regarding cooperation on environmental analyses be effectively implemented in order to provide the promised benefits. Another commenter stated

they are hopeful that the MOU between the BLM and the NRC will result in greater efficiencies and cost savings to licensees and applicants. One commenter stated that the NRC has made little progress in the Section 106 Tribal Consultation Process and has not issued the high-level, agency-wide Section 106 guidance as promised in the response to comments in the *Federal Register* dated June 15, 2012.

*Response.* Regarding comments concerning ways to reduce fees through efficient use of resources, the staff's responses in Section II.A, "Specific 10 CFR Part 170 Issues," of this document address this issue. As discussed in Section II.A, the NRC staff has recently established efficient licensing processes. Additionally, efficiencies can be achieved through early and frequent interactions between staff and applicants and timely, high quality responses to requests for additional information during the safety and environmental review processes.

Regarding industry assistance to the NRC in petitioning Congress for additional resources for uranium recovery and budgeting for future initiatives, the NRC has sufficient resources necessary to perform its mission. The budgeted resources allow the NRC staff to prioritize its uranium recovery work by addressing currently licensed activities first since these facilities are active and align with our mission of ensuring health and safety of operating facilities. The NRC then budgets and reviews new license and expansion applications consistent with the anticipated number of applications and the uncertainty associated with scheduled license submissions. The current resources are sufficient to allow the staff to review 8 to 10 major applications at any given time. However, the staff has deferred the reviews of certain expansion and new license applications, the longest of which was 6 months to focus on other high-priority items. Furthermore, planned guidance development has been delayed to free resources to address the top two priorities. As more sites are licensed, the number of license maintenance activities will increase; thereby, reducing the number of major applications that can

be reviewed at any given time. The NRC is aware of this situation and will provide resources commensurate with the uranium recovery workload.

Regarding the comments that design certification requests be submitted as petitions for rulemaking and streamlining of licensing regulatory processes to use standardized and pre-approved designs and to process new applications along with existing applications, the NRC agrees with the comments. On multiple occasions, the staff has stated it would entertain a strategy of certifying standard designs as a means of streamlining the application and review processes for new facilities or expansions. This can be accomplished by multiple methods. One method is the design certification where a specific aspect of a uranium recovery facility is standardized and codified. Reactor designs, for example, have been certified by the staff and are included in 10 CFR part 52. However, these designs are incorporated into the regulations by a rulemaking, which could be requested under 10 CFR part 2. A second method would involve industry preparing standard designs for certain aspects of uranium recovery facilities, which are reviewed by the staff. Afterwards, the staff documents this review in a published NUREG. Similar to design certifications, this NUREG could be incorporated by reference into license applications. The staff would be willing to discuss such certifications in publicly noticed meetings at industry's request.

In reference to the comments that the NRC is not effectively implementing the GEIS and the MOU between the BLM to achieve greater efficiencies and cost savings, the NRC disagrees with this comment. The staff has effectively utilized the GEIS by referencing the conclusions in the GEIS, as appropriate, within its site-specific supplemental EISs. This has reduced the time required to prepare the supplemental EISs. Furthermore, the MOU between the NRC and the BLM was recently revised to enhance communication and cooperation between the NRC and BLM staff during the preparation of environmental review documents. This MOU streamlines the agencies' NEPA and Section 106 review processes by allowing the agencies to jointly

conduct these reviews, prepare one review document, and, thus, minimize duplication of efforts, whereby, resulting in greater efficiencies and cost savings to the agency.

Regarding the comment that the NRC first, has made little progress in the Section 106 Tribal Consultation Process and, second, that the Tribal consultation guidance has not been issued, the NRC staff disagrees with the first part of the comment, and agrees with the second part. Regarding the comment on the progress on the process, during the Commission Briefing on Uranium Recovery on February 20, 2013, the NRC staff discussed the challenges that the Section 106 process has presented in recent years. The NRC has experienced a substantial expansion of the Section 106 consultation activities for the ISR projects. There has been a significant increase in the number of Native American Tribes interested in each ISR project, from a few Tribes prior to 2010, to a current average of 20 Tribes per project. This has resulted in a significant increase in the number and complexity of consultations and the need for the NRC staff to enhance its efforts to ensure that historic properties of religious and cultural significance to the Tribes are identified.

However, the NRC staff recently has made progress and facilitated Tribal field surveys for four ISR project sites. Furthermore, Tribal field surveys for two ISR project sites are expected to be completed in Spring/Summer 2013. As stated in Section A of this document, the staff also has increased its Section 106 consultation efficiency by starting its Section 106 cultural and historic resource consultations earlier and using alternate approaches to cultural and historic resource surveys.

Regarding the comment on the guidance, the staff agrees that the high-level Section 106 guidance has not been issued. However, the NRC staff is currently in the process of developing this high-level Section 106 guidance specific for uranium recovery projects based on knowledge and experience gained through work efforts on the NRC's Tribal Protocol Manual and the NRC's

Tribal Policy Statement. The NRC staff expects to issue a draft of the Section 106 guidance for public comment by spring 2014.

## 2. Education Programs.

*Comment.* One commenter is pleased that the Continuing Resolution Appropriations restores funding for the Integrated University Program which was previously cut under the President's FY 2013 budget. The same commenter stated that this funding ensures that a well trained and educated nuclear professional will meet the needs of government and industry.

*Response.* The NRC agrees that it is effectively managing the Integrated University Program. The NRC's resources for this program are recovered as part of its fee-relief activities.

## 3. Transparency.

*Comment.* One commenter urged the NRC to revise and republish proposed fees reflecting the actual budget for FY 2013. The same commenter stated the NRC should follow a consistent and transparent process for determining and publishing its planned fees. The commenter further stated that if it requires additional time for the NRC to republish proposed fees after considering all budget perturbations forced on the agency by Congress, the NRC should take whatever time necessary to ensure the basis for its fees is openly and timely available to all stakeholders. The commenter is concerned that publishing a proposed fee rule based on one set of circumstances, and a final fee rule based on another set of circumstances undermines the whole purpose of the rulemaking process.

*Response.* The NRC disagrees with these comments. The NRC strives to ensure proposed fee rulemakings are as accurate as possible in compliance to the statutory requirements, OBRA-90 and the Administrative Procedure Act (APA). The OBRA-90 requires the NRC to collect 90 percent of the budget authority through fees assessed to licensees by the

end of the fiscal year. Section 553 of the APA requires the NRC to give the public an opportunity to comment on a rule proposed by the agency before the rule can be put into effect. This section also requires the effective date of a regulation be not less than 30 days from the date of publication unless there is a good cause for implementation at an earlier date. Additionally, this final fee rule has been designated as a “major rule” under the Congressional Review Act and cannot become effective until 60 days after publication of the final rule in the *Federal Register*. Due to schedule requirements, the NRC will not republish the FY 2013 Proposed Fee Rule, but will ensure the FY 2013 Final Fee Rule is published in a timely manner.

#### 4. Fee Structure.

*Comment.* One commenter stated that the NRC should be totally government funded. Another commenter stated that the current NRC fee structure creates problems of impartiality where dependence for budget is based on having more operating nuclear plants to fund the NRC. The same commenter stated that the current NRC fee structure is too low and hourly work rates are below those many lawyers and similar professionals charge. The commenter further stated that a higher hourly rate is appropriate due to the wide scope of overhead and other work which stems from inspection work. The same commenter suggested that NRC should drastically increase the rate for any hourly charged work that is part of a failure or non-compliance by an operator. The commenter also stated the NRC is spending considerable amounts of manpower dealing with the results of poor operator conduct.

*Response.* The NRC disagrees with these comments. The NRC cannot be totally government funded without Congress overturning the existing law that governs the NRC’s budget authority which is OBRA-90, as amended. The OBRA-90, as amended, requires the NRC to collect 90 percent of its recoverable budget through fees assessed to licensees.

Regarding the comment concerning the NRC fee structure, the NRC believes the current fee methodology used to compute the hourly rate fairly distributes the mission direct and indirect costs to all licensees. The methodology also ensures that the costs of specific services provided by the NRC staff that benefit specific licensees, which includes activities associated with noncompliance, are charged to those licensees who require and/or receive these services by NRC staff as opposed to imposing these costs on all licensees. The costs associated with these specific services are assessed in the form of hourly fees billed for the NRC staff time expended to ensure licensee compliance to the NRC's regulations.

#### 5. Exemptions.

*Comment.* One commenter stated the NRC should update § 170.11(a)(1)(iii)(B) to read "The NRC must be the primary beneficiary of the NRC's review and approval of these documents." The same commenter stated the last sentence should be deleted from this section because as written, no one could ever receive a fee exemption. Another commenter stated that the NRC should update § 170.11(a)(1)(iii)(D) to read, "The report should be generically applicable to multiple licensees. The exemption applies even if the report does not apply to a complete class of licensees." The commenter further stated that this change will ensure the widest possible use of any report reviewed and endorsed by the NRC, but still allow a sub-set of a class of licensees.

*Response.* The NRC disagrees with the comments and believes the current regulations provide fair treatment to all licensees regarding the conditions required for exemption approval on request/reports. The established threshold for consideration of fee exemptions were developed recognizing that the costs of exempted reviews are recovered through annual fees to all the licensees in the affected fee class.

The NRC encourages public input through the petition for rulemaking process which is a system by which any member of the public can request that the NRC develop, modify, or rescind a regulation. Information on the petition for rulemaking process is available on the NRC's public Web site at <http://www.nrc.gov/about-nrc/regulatory/rulemaking/petition-rule.html>.

#### 6. Fee Schedules.

*Comment.* One commenter supports the new revision of the fee schedules for FY 2013 to address inflation and extra expenses. The same commenter further stated that the NRC, after the Fukushima Dai-ichi accident in Japan has had to perform more studies, analysis and inspections to determine the lessons learned and the applicability to aging U.S. reactors. Another commenter dislikes the new revision of the fee schedules and stated that the licensees are giving the NRC more bribe money to overlook incidents at nuclear power plants.

*Response.* The NRC agrees with the comment supporting the new revision of the NRC fee schedules. The NRC disagrees with the comment stating that licensee fees are bribes to the NRC to overlook incidents at facilities. OBRA-90 and implementing regulations promulgated by the NRC require licensees to pay fees. The NRC ensures no incident at nuclear power plant is overlooked and believes the fee schedules accurately represent the NRC's cost of providing regulatory services to all licensees. The NRC concludes that neither of these comments warrant policy changes in 10 CFR part 170 and 171. Therefore, no changes were made to the final rule in response to these comments.

### **III. Final Action.**

The NRC assesses two types of fees to meet the requirements of OBRA-90. First, user fees, presented in 10 CFR part 170 under the authority of the IOAA, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. For example, the NRC

assesses these fees to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR part 171 under the authority of OBRA-90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees. Under this rulemaking, the NRC continues the fee cost recovery principles through the adjustment of fees without changing the underlying principles of the NRC fee policy in order to ensure that the NRC continues to comply with the statutory requirements of OBRA-90, the AEA, and the IOAA.

### **FY 2013 Appropriation**

On March 26, 2013, President Obama signed the Consolidated and Further Continued Appropriations Act of 2013, giving the NRC a total appropriation of \$985.6 million. Accordingly, in compliance with the Atomic Energy Act of 1954, as amended, and OBRA-90, the NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2013 budget authority, less the appropriations for non-fee items. The amount of the NRC's required fee collections is set by law and is, therefore, outside the scope of this rulemaking.

### **FY 2013 Fee Collection**

In compliance with the AEA and OBRA-90, the NRC amends its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2013 budget authority less the appropriations for non-fee items. The NRC's total budget authority for FY 2013 is \$985.6 million. The non-fee items excluded outside of the fee base includes \$0.8 million for WIR activities and \$24.9 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC is required to recover \$864.0 million in FY 2013 through 10 CFR part 170 licensing and inspection fees and through 10 CFR part 171 annual fees. This

amount is \$45.5 million less than the amount for recovery in FY 2012, a decrease of 5.0 percent. The FY 2013 fee recovery amount increases by \$200,000 as a result of billing adjustments (sum of unpaid current year invoices (estimated) minus payments for prior year invoices), and reduces by \$20.9 million for unbilled prior year invoices under 10 CFR part 170 and \$4.6 million for current year collections made the termination of two operating reactors.

Table I summarizes the budget and fee recovery amounts for FY 2013. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

**TABLE I - BUDGET AND FEE RECOVERY AMOUNTS**

**[Dollars in millions]**

|   | <u>FY 2012</u><br><u>Final Rule</u> | <u>FY 2013</u><br><u>Final Rule</u> |
|---|-------------------------------------|-------------------------------------|
| Total Budget Authority  | \$1,038.1                           | \$985.6                             |
| Less Non-Fee Items  | <u>-27.5</u>                        | <u>-25.7</u>                        |
| Balance   | \$1,010.6                           | \$959.9                             |
| Fee Recovery Rate for FY 2013   | <u>90%</u>                          | <u>90%</u>                          |
| Total Amount to be Recovered for FY 2013                                      | \$909.5                             | 864.0                               |
| 10 CFR Part 171 Billing Adjustments:  |                                     |                                     |
| Unpaid Current Year Invoices (estimated)                                      | 2.3                                 | 2.2                                 |
| Less Current Year from Collections (Terminated - Operating Reactors)          | 0.0                                 | -4.6                                |
| Less Payments Received in Current Year for Previous Year Invoices (estimated) | <u>-10.8</u>                        | <u>-2.0</u>                         |
| Subtotal  | -8.5                                | 4.4                                 |
| Amount to be Recovered through 10 CFR Parts 170 and 171 Fees                  | \$901.0                             | \$859.6                             |

|   |               |               |
|---|---------------|---------------|
| Less Estimated 10 CFR Part 170 Fees           | <u>-345.2</u> | <u>-327.1</u> |
| Less Prior Year Unbilled 10 CFR Part 170 Fees |               | <u>-20.9</u>  |
| 10 CFR Part 171 Fee Collections Required      | \$555.8       | \$511.6       |

In this final fee rule, the NRC amends fees for power reactors, spent fuel storage/reactor decommissioning, non-power reactors, uranium recovery facilities, most fuel facilities, some small materials users, and the U.S. Department of Energy's (DOE) transportation license. The 10 CFR part 170 fees decrease by \$15.3 million from the proposed fee rule estimate of \$363.3 million primarily due to a reduction in budgetary resources and licensing actions. As a result of this change, the total annual fees decrease by \$50.1 million from the proposed rule estimate of \$561.7 million. In general, the percentage changes in most annual fees compared to the previous year are relatively small due to a decrease in the NRC's appropriation as compared to FY 2012. The FY 2013 appropriation also resulted in a small decrease to the average FTE rate that is used to calculate the budget allocation to each of the fee classes and fee-relief activities in this final rule.

The NRC estimates that \$348 million will be recovered from 10 CFR part 170 fees under this final fee rule. This represents an increase of approximately 0.8 percent as compared to the actual 10 CFR part 170 collections of \$345.2 million in FY 2012. The NRC derived the FY 2013 estimate for the 10 CFR part 170 fee collections from the latest billing data that includes the collection of prior year 10 CFR part 170 unbilled invoices which occurred as result of the adoption of a new accounting system in October 2010. In October 2012, the NRC became aware that certain project managers' and resident inspectors' (including senior resident inspectors) hours were not being billed for services rendered by the NRC. This error resulted in the NRC under billing some of its licensees for a total of \$20.9 million for the past eight quarters under 10 CFR part 170. The NRC is statutorily obligated to collect the appropriate fees for

services provided; therefore, the NRC applied the estimate of this collection of fees to FY 2013 10 CFR part 170 billings and the FY 2013 annual fees have annually been adjusted to account for this additional revenue collection. The FY 2013 billing adjustments estimated that the unpaid current year invoices total \$2.2 million and the estimated receipt of payments total \$2 million for previous year invoices. Additionally, the billing adjustments include \$4.6 million in the current year collections for the termination of two operating reactors in FY 2013.

The remaining \$511.5 million is to be recovered through the 10 CFR part 171 annual fees in FY 2013, which is a decrease of approximately 8 percent compared to actual 10 CFR part 171 collections of \$555.8 million for FY 2012. The change for each class of licensees affected is discussed in Section III.B.3, “Administrative Amendments,” of this document.

### **FY 2013 Billing**

The FY 2013 final fee rule is a “major rule” as defined by the Congressional Review Act of 1996 (5 U.S.C. 801-808). Therefore, the NRC’s fee schedules for FY 2013 will become effective 60 days after publication of the final rule in the *Federal Register*. Upon publication of the FY 2013 final fee rule, the NRC will send an invoice for the amount of the annual fee to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of \$100,000 or more. For these licensees, payment is due on the effective date of the FY 2013 final fee rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2013 annual fee, less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than \$100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2013 falls before the effective date of the FY 2013 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2012 annual fee rate. Those materials licensees whose license

anniversary date falls on or after the effective date of the FY 2013 final rule will be billed for the annual fee at the FY 2013 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

### **FY 2013 Amendment Changes**

The NRC is amending 10 CFR parts 170 and 171 as discussed in the following sections.

*A. Amendments to Part 170 of Title 10 of the Code of Federal Regulations (10 CFR): Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended.*

In FY 2013, the NRC is decreasing the hourly rate to recover the full cost of activities under 10 CFR part 170 and has used this rate to calculate “flat” application fees.

The NRC is making the following changes:

1. Hourly Rate.

The NRC’s hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is changing the current hourly rate of \$274 to \$272 in FY 2013. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The FY 2013 hourly rate is 0.7 percent lower than the FY 2012 hourly rate of \$274. The decrease in the hourly rate is due primarily to lower agency budgeted resources and by a small increase in the number of direct FTE. The following paragraphs describe the hourly rate calculation in further detail.

The NRC’s hourly rate is derived by dividing the sum of recoverable budgeted resources for 1) mission direct program salaries and benefits; 2) mission indirect program support; and 3) agency corporate support and the Inspector General (IG), by mission direct FTE hours. The

mission direct FTE hours are the product of the mission direct FTE multiplied by the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for contract activities related to mission direct and fee-relief activities.

In FY 2013, the NRC used 1,351 hours per direct FTE, a decrease of 1.5 percent from FY 2012, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2013 fee rule. Based on this review of the most recent data available, the NRC determined that 1,351 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

**TABLE II - HOURLY RATE CALCULATION**

|  | <u>FY 2012</u><br><u>Final Rule</u> | <u>FY 2013</u><br><u>Final Rule</u> |
|--|-------------------------------------|-------------------------------------|
| Mission Direct Program Salaries & Benefits   | \$349.9                             | \$345.1                             |
| Mission Indirect Program Support   | \$25.9                              | \$19.7                              |
| Agency Corporate Support, and the IG   | <u>\$472.3</u>                      | <u>\$474.8</u>                      |
| Subtotal   | \$848.0                             | \$839.6                             |
| Less Offsetting Receipts   | <u>-\$0.0</u>                       | <u>\$0.0</u>                        |
| Total Budget Included in Hourly Rate (Millions of Dollars)   | \$848.0                             | \$839.6                             |
| Mission Direct FTE (Whole numbers)   | 2,258                               | 2,285                               |
| Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)<br>(Whole Numbers) | \$274                               | \$272                               |

As shown in Table II, dividing the FY 2013 \$839.6 million budget amount included in the hourly rate by total mission direct FTE hours (2,285 FTE times 1,351 hours) results in an hourly rate of \$272. The hourly rate is rounded to the nearest whole dollar.

## 2. Flat Application Fee Changes.

The NRC is adjusting current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of \$272. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2013.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officer's Act. The NRC conducted this biennial review for the FY 2013 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data in FY 2013 shows that the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current data for completing these licensing actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2011 final fee rule. Thus, the revised proposed average professional staff hours in this final fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

This final rule also includes three new fee categories, 2.D. through 2.F, and a modified description of fee category 2.C., which were not included in the proposed fee rule. These changes were introduced in the proposed rule, "Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions," dated

July 26, 2010 (75 FR 43425), and the rule was published as a final rule on May 29, 2013 (78 FR 32310). The fees for these new fee categories 2.C through 2.F., absent a biennial review, were determined by performing a comparative analysis to related fee categories. As a result, this final fee rule lowers the fees for categories 2.D and 2.E, and increases the fee for category 2.C from those fees listed in the final source material rule to be consistent with the calculated fee changes in this final fee rule; the fee for category 2.F. remains unchanged from that listed in the final source material rule.

In general, the increase in application fees is due to the increased number of hours to perform specific activities based on the biennial review. Application fees for 10 fee categories (2.B., 3.H., 3.M., 3.N., 3.P., 3.R.2., 3.S., 5.A., 7.C., and 10.B. under § 170.31) increase as a result of the average time to process these types of license applications. The decrease in fees for 9 fee categories (2.F. (formerly 2.C.), 3.B., 3.C., 3.I., 3.Q., 4.B., 9.A., 9.C., and 16 under § 170.31) is due to a decrease in average time to process these types of applications. Also, the application fees increase for 3 import and export fee categories (K.4, 15.D, and 15.H under § 170.31).

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 1.F., 2.B., 2.C., 2.D., 2.E., 2.F., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.L., 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2013 final fee rule would be subject to the revised fees in the final rule.

### 3. Administrative Amendments.

This final rule is making the following administrative changes for clarity:

a. § 170.21: Footnote 2 is revised to reflect there are no more applications pending review prior to 1991. The following language is deleted, “For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.”

b. § 170.21: Footnote 4 is revised to include “in 10 CFR part 110.27,” for clarity.

c. § 170.31: The fee category name for 2.A.(1) is changed to include “deconversion,” to reflect the new description and the description for fee category 2.A.(1) is changed to include “or for deconverting uranium hexafluoride in the production of uranium oxides for disposal,” to capture the deconversion of uranium hexafluoride ( $UF_6$ ) into uranium oxides for disposal and commercial sale of the fluoride byproducts from uranium deconversion facilities.

d. § 170.31: The descriptions for fee categories 1.C., 1.D., and Footnote 4 are changed and a new fee category 1.F. is created to address licenses authorizing greater than critical mass as defined by § 70.4, “Critical Mass.” Under 10 CFR part 170, the fee category 1.C. description includes “of less than a critical mass as defined in § 70.4 of this chapter.”<sup>4</sup> The fee category 1.D. description is changed to, “All other special nuclear material licenses, except licenses

authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under Category 1.A.<sup>4</sup>” A new fee category 1.F. reads, “For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.<sup>4</sup>” The Footnote 4 includes fee category 1.F. along with fee categories 1.C. and 1.D. for sealed sources authorized in the same license.

e. § 170.31: The description for fee category 15.D. is revised to exclude language regarding import and export of radioactive waste. The new description reads, “Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.”

f. § 170.31: Footnote 3 is revised for clarity because there are no more applications on file prior to 1991 and deletes the following language, “For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff- hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.”

In summary, the NRC is making the following changes to 10 CFR part 170:

1. Establishes a revised professional hourly rate to use in assessing fees for specific services;

2. Revises the license application fees to reflect the FY 2013 hourly rate; and
3. Makes administrative changes to §§ 170.21 and 170.31.

*B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.*

The NRC will use its fee-relief surplus to decrease all licensees' annual fees based on their percentage share of the fee recoverable budget authority. This rulemaking also makes changes to the number of NRC licensees and establishes rebaselined annual fees based on Pub. L. 112-10. The amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste (LLW) Surcharge.

The NRC will use its fee-relief surplus to decrease all licensees' annual fees, based on their percentage share of the budget. The NRC will apply the 10 percent of its budget that is excluded from fee recovery under OBRA-90, as amended (fee relief), to offset the total budget allocated for activities that do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC's fee relief. Any difference between the fee-relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees' annual fees, based on their percentage share of the budget, which is consistent with the existing fee methodology.

The FY 2013 budgetary resources for the NRC's fee-relief activities are \$89.8 million. The NRC's 10 percent fee-relief amount in FY 2013 is \$96.0 million, leaving a \$6.2 million fee-relief surplus that will reduce all licensees' annual fees based on their percentage share of the budget. The FY 2013 budget for fee-relief activities decreased from FY 2012 mainly due to a decrease in the FY 2013 NRC appropriated budget even though there was an increase of \$1.2 million in the small entity subsidy.

Table III shows the budgeted costs for fee-relief activities and the fee-relief adjusted amount to be allocated to annual fees. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

**TABLE III - FEE-RELIEF ACTIVITIES**

**[Dollars in millions]**

| <u>Fee-Relief Activities</u>  | <u>FY 2012<br/>Budgeted<br/>Costs</u> | <u>FY 2013<br/>Budgeted<br/>Costs</u> |
|---|---------------------------------------|---------------------------------------|
| 1. Activities not attributable to an existing NRC licensee or class of licensee:  |                                       |                                       |
| a. International activities   | \$9.0                                 | \$10.2                                |
| b. Agreement State oversight  | \$11.0                                | \$10.3                                |
| c. Scholarships and Fellowships   | \$16.8                                | \$16.4                                |
| d. Medical Isotope Production   | \$3.4                                 | \$3.5                                 |
| 2. Activities not assessed under 10 CFR part 170 licensing and inspection fees or 10 CFR part 171 annual fees based on existing law or Commission policy: |                                       |                                       |
| a. Fee exemption for nonprofit educational institutions   | \$11.2                                | \$10.2                                |
| b. Costs not recovered from small entities under 10 CFR 171.16(c)   | \$6.5                                 | \$7.7                                 |
| c. Regulatory support to Agreement States   | \$17.5                                | \$16.3                                |
| d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)  | \$14.0                                | \$13.9                                |
| e. <i>In Situ</i> leach rulemaking and unregistered general licensees   | <u>\$1.7</u>                          | <u>\$1.3</u>                          |
| Total fee-relief activities   | \$91.1                                | \$89.8                                |
| Less 10 percent of NRC's FY 2012 total budget (less non-fee items)  | <u>-\$101.1</u>                       | <u>-\$96.0</u>                        |
| Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees   | -\$10.0                               | -\$6.2                                |

Table IV shows how the NRC is allocating the \$6.2 million fee-relief surplus adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief surplus adjustment is subtracted from the required annual fee recovery for each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: Operating reactors, fuel facilities, and materials users. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. In FY 2013, this allocation percentage was updated based on review of recent data which reflects the change in the support to the various fee classes. The allocation percentage of LLW surcharge decreased for operating reactors and increased for fuel facilities and materials users compared to FY 2012.

Table IV also shows the allocation of the LLW surcharge activity. For FY 2013, the total budget allocated for LLW activity is \$3.4 million. (Individual values may not sum to totals due to rounding.)

**TABLE IV - ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE,  
FY 2013  
[Dollars in millions]**

|  | LLW Surcharge  |           | Fee-Relief Adjustment |           | Total     |
|--|----------------|-----------|-----------------------|-----------|-----------|
|  | <u>Percent</u> | <u>\$</u> | <u>Percent</u>        | <u>\$</u> | <u>\$</u> |
| Operating Power Reactors                   | 53.0           | 1.8       | 85.4                  | -5.3      | -3.5      |
| Spent Fuel Storage/Reactor Decommissioning | ---            | ---       | 3.9                   | -0.2      | -0.2      |
| Research and Test Reactors                 | ---            | ---       | 0.2                   | 0.0       | 0.0       |

|                  |       |     |            |             |             |
|------------------|-------|-----|------------|-------------|-------------|
| Fuel Facilities  | 37.0  | 1.3 | 6.0        | -0.4        | 0.9         |
| Materials Users  | 10.0  | 0.3 | 2.9        | -0.2        | 0.1         |
| Transportation   | ---   | --- | 0.4        | -0.0        | -0.0        |
| Uranium Recovery | ---   | --- | <u>1.1</u> | <u>-0.1</u> | <u>-0.1</u> |
| Total            | 100.0 | 3.4 | 100.0      | -6.2        | -2.8        |

## 2. Revised Annual Fees.

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2013 to recover approximately 90 percent of the NRC's FY 2013 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through 10 CFR part 170 fees. The 10 CFR part 170 collections estimates for this final fee rule is \$348 million, an increase of \$2.8 million from the FY 2012 final fee rule. The total amount to be recovered through annual fees for this final fee rule is \$511.6 million, a decrease of \$44.3 million from the FY 2012 final fee rule. The required annual fee collection in FY 2012 was \$555.8 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail, and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that for most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with the FY 2012 annual fees, the FY 2013 final rebaselined fees decrease for two classes of licensees: operating reactors and DOE Transportation Activities. The annual fees increase for five classes of licensees: spent fuel storage/reactor and decommissioning, research and test reactors, fuel facilities and most materials and uranium recovery licensees.

The NRC's total fee recoverable budget, as mandated by law, decreases by \$45.6 million for FY 2013 compared to FY 2012. The FY 2013 budget was allocated to the fee classes that the budgeted activities support. The annual fees increase for spent fuel storage/reactor and decommissioning, research and test reactors, fuel facilities, and most materials and uranium recovery licensees while annual fees for operating reactors and DOE Transportation Activities decrease.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2013); the estimated 10 CFR part 170 collections for the various classes of licenses, and allocation of the fee-relief surplus adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2012 to FY 2013.

Table V shows the rebaselined fees for FY 2013 for a representative list of categories of licensees. The FY 2012 amounts are provided for comparison purposes. (Individual values may not sum to totals due to rounding.)

**TABLE V - REBASELINED ANNUAL FEES**

| <u>Class/Category of Licenses</u>  | <u>FY 2012<br/>Annual Fee</u> | <u>FY 2013<br/>Annual Fee</u> |
|--|-------------------------------|-------------------------------|
| Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee) | \$4,766,000                   | \$4,390,000                   |
| Spent Fuel Storage/Reactor Decommissioning   | \$211,000                     | \$231,000                     |
| Research and Test Reactors (Nonpower Reactors)   | \$34,700                      | \$81,600                      |
| High Enriched Uranium Fuel Facility  | \$6,329,000                   | \$6,997,000                   |
| Low Enriched Uranium Fuel Facility   | \$2,382,000                   | \$2,633,000                   |
| UF <sub>6</sub> Conversion and Deconversion Facility                                       | \$1,293,000                   | \$1,429,000                   |
| Conventional Mills   | \$23,600                      | \$27,900                      |

|                                   |          |          |
|-----------------------------------|----------|----------|
| Typical Materials Users:          |          |          |
| Radiographers (Category 3O)       | \$25,900 | \$27,200 |
| Well Loggers (Category 5A)        | \$10,200 | \$12,600 |
| Gauge Users (Category 3P)         | \$4,900  | \$6,400  |
| Broad Scope Medical (Category 7B) | \$46,100 | \$32,900 |

The work papers (ADAMS Accession No. ML13154A025) that support this final fee rule show in detail the allocation of the NRC's budgeted resources for each class of licenses and how the fees are calculated. The work papers are available as indicated in Section V, "Availability of Documents," of this document.

Paragraphs a. through h. of this section describes budgetary resources allocated to each class of licenses and the calculations of the rebaselined fees. Individual values in the tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities.

The FY 2013 budgeted costs to be recovered in the annual fees assessment to the fuel facility class of licenses (which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1) under § 171.16) are approximately \$32.9 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated 10 CFR part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2013, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document). The summary calculations used to derive this value are presented in Table VI for FY 2013, with FY 2012 values shown for comparison. (Individual values may not sum to totals due to rounding.)

**TABLE VI - ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES****[Dollars in millions]**

| <u>Summary Fee Calculations</u>         | FY 2012<br><u>Final</u> | FY 2013<br><u>Final</u> |
|---|-------------------------|-------------------------|
| Total budgeted resources                | \$54.4                  | \$50.7                  |
| Less estimated 10 CFR part 170 receipts | -\$25.6                 | -\$19.5                 |
| Net 10 CFR part 171 resources           | \$28.8                  | \$31.2                  |
| Allocated generic transportation        | +\$0.9                  | +\$0.8                  |
| Fee-relief adjustment/LLW surcharge     | +\$0.6                  | +\$0.9                  |
| Billing adjustments                     | <u>-\$0.5</u>           | <u>-\$0.0</u>           |
| Total required annual fee recovery      | \$29.7                  | \$32.9                  |

The decrease in total budgeted resources for the fuel facilities fee class from FY 2012 to FY 2013 is primarily due to reduced licensing actions. Although fuel facilities received an adjustment of approximately \$153,000 for prior year unbilled 10 CFR part 170 adjustments, the annual fee for fuel facilities increases from FY 2012 to FY 2013 primarily due to the estimated decreased 10 CFR part 170 billings due to reduced budgetary resources for licensing actions. The NRC allocates the total required annual fee recovery amount to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (e.g., decommissioning or license termination) that results in it not being subject to 10 CFR part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes 10 types of regulatory activities, including enrichment and scrap/waste-related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and 10 (high regulatory effort). The NRC then totals separate effort factors for safety and safeguard activities for each fee category.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). This results in spreading of costs to other fee categories. The Uranium Enrichment fee category factors have shifted with minimal increases and decreases between safety and safeguards factors compared to FY 2012.

**TABLE VII – EFFORT FACTORS FOR FUEL FACILITIES,  
FY 2013**

| <u>Facility Type (fee category)</u>                   | <u>Number<br/>of<br/>Facilities</u> | <u>Effort Factors<br/>(percent of total)</u> |                   |
|---|-------------------------------------|--|-------------------|
|   |                                     | <u>Safety</u>                                | <u>Safeguards</u> |
| High Enriched Uranium Fuel (1.A.(1)(a))               | 2                                   | 89 (38.5)                                    | 97 (47.0)         |
| Low Enriched Uranium Fuel (1.A.(1)(b))                | 3                                   | 70 (30.3)                                    | 35 (17.0)         |
| Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))  | 1                                   | 3 (1.3)                                      | 15 (7.3)          |
| Hot Cell (1.A.(2)(c))                                 | 1                                   | 6 (2.6)                                      | 3 (1.5)           |
| Uranium Enrichment (1.E.)                             | 2                                   | 51 (22.1)                                    | 49 (23.8)         |
| UF <sub>6</sub> Conversion and Deconversion (2.A.(1)) | 1                                   | 12 (5.2)                                     | 7 (3.4)           |

For FY 2013, the total fee recovery budget for safety activities, before the fee-relief adjustment is made, are \$16.9 million. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the total fee recovery budget of \$15 million for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief

adjustment of \$0.4 million is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each fuel facility is summarized in Table VIII.

**TABLE VIII - ANNUAL FEES FOR FUEL FACILITIES**

| <u>Facility Type (fee category)</u>                   | <u>FY 2013<br/>Final Annual<br/>Fee</u> |
|---|---|
| High Enriched Uranium Fuel (1.A.(1)(a))               | \$6,997,000                             |
| Low Enriched Uranium Fuel (1.A.(1)(b))                | \$2,633,000                             |
| Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))  | \$1,354,000                             |
| Hot Cell (and others) (1.A.(2)(c))                    | \$677,000                               |
| Uranium Enrichment (1.E.)                             | \$3,762,000                             |
| UF <sub>6</sub> Conversion and Deconversion (2.A.(1)) | \$1,429,000                             |

b. Uranium Recovery Facilities

The total FY 2013 budgeted costs to be recovered through annual fees assessed with the uranium recovery class (which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5), and 18.B. under § 171.16) are approximately \$1 million. The derivation of this value is shown in Table IX, with FY 2012 values shown for comparison purposes.

**TABLE IX - ANNUAL FEE SUMMARY CALCULATIONS  
FOR URANIUM RECOVERY FACILITIES**

**[Dollars in millions]**

| <u>Summary fee calculations</u>         | <u>FY 2012<br/>Final</u> | <u>FY 2013<br/>Final</u> |
|---|--------------------------|--------------------------|
| Total budgeted resources                | \$9.5                    | \$9.9                    |
| Less estimated 10 CFR part 170 receipts | <u>-\$8.3</u>            | <u>-\$8.9</u>            |
| Net 10 CFR part 171 resources           | \$1.2                    | \$1.0                    |
| Allocated generic transportation        | N/A                      | N/A                      |
| Fee-relief adjustment                   | -\$0.1                   | -\$0.0                   |
| Billing adjustments                     | <u>-\$0.0</u>            | <u>-\$0.0</u>            |
| Total required annual fee recovery      | \$1.0                    | \$1.0                    |

The increase in total budgeted resources allocated to this fee class in FY 2013 is primarily due to an increase in licensing board activities. The annual fees increase for uranium recovery facilities primarily due to rulemaking and licensing board activities as well as a decrease in budgeted cost for the Uranium Mill Tailings Radiation Control Act (UMTRCA).

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the UMTRCA. The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2013, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I and II activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

**TABLE X - COSTS RECOVERED THROUGH ANNUAL FEES;  
URANIUM RECOVERY FEE CLASS**

|  |                  |
|--|------------------|
| DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:  |                  |
| UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts   | \$ 666,626       |
| 10 percent of generic/other uranium recovery budgeted costs  | \$40,487         |
| 10 percent of uranium recovery fee-relief adjustment   | <u>-\$7,084</u>  |
| Total Annual Fee Amount for DOE (rounded)  | \$700,000        |
| Annual Fee Amount for Other Uranium Recovery Licenses:   |                  |
| 90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I and Title II activities | \$364,379        |
| 90 percent of uranium recovery fee-relief adjustment   | <u>-\$63,757</u> |
| Total Annual Fee Amount for Other Uranium Recovery Licenses  | \$300,621        |

The DOE fee decreases by 10 percent in FY 2013 compared to FY 2012 due to reduced UMTRCA budgeted costs. The annual fee for most uranium recovery licensees increases due to licensing board activities.

The NRC will continue to use a matrix which is included in the work papers to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately \$300,621 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2013 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). These categories are conventional uranium mills and heap leach facilities, uranium *In Situ* Recovery (ISR) and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. The activities related to generic decommissioning/reclamation are not included in the matrix because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of zero, five, and 10, respectively, in the matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of zero to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and 10 (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). The NRC then calculates total and per licensee benefit factors for each fee category. These

benefit factors reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class are shown in Table XI.

**TABLE XI - BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES**

| <u>Fee Category</u>  | <u>Number of Licensees</u> | <u>Benefit Factor Per Licensee</u> | <u>Total Value</u> | <u>Benefit Factor Percent Total</u> |
|--|----------------------------|------------------------------------|--------------------|-------------------------------------|
| Conventional and Heap Leach mills (2.A.(2)(a))                   | 1                          | 150                                | 150                | 9                                   |
| Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))            | 6                          | 190                                | 1,140              | 71                                  |
| Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))         | 1                          | 215                                | 215                | 13                                  |
| 11e.(2) disposal incidental to existing tailings sites (2.A.(4)) | 1                          | 85                                 | 85                 | 5                                   |
| Uranium water treatment (2.A.(5))                                | 1                          | 25                                 | 25                 | 2                                   |
| Total  | 10                         | 665                                | 1,615              | 100                                 |

Applying these factors to the approximately \$300,621 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII.

**TABLE XII - ANNUAL FEES FOR URANIUM RECOVERY LICENSEES**

**(Other than DOE)**

| <u>Facility Type (fee category)</u>                   | <u>FY 2013<br/>Final Annual Fee</u> |
|---|-------------------------------------|
| Conventional and Heap Leach mills (2.A.(2)(a))        | \$27,900                            |
| Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b)) | \$35,400                            |

|  |          |
|--|----------|
| Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))         | \$40,000 |
| 11e.(2) disposal incidental to existing tailings sites (2.A.(4)) | \$15,800 |
| Uranium water treatment (2.A.(5))                                | \$4,700  |

c. Operating Power Reactors.

The total budgeted costs to be recovered from the power reactor fee class in FY 2013 in the form of annual fees is \$424.2 million as shown in Table XIII. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

**TABLE XIII - ANNUAL FEE SUMMARY CALCULATIONS FOR  
OPERATING POWER REACTORS**  
[Dollars in millions]

| <u>Summary Fee Calculations</u>                         | FY 2012<br><u>Final</u> | FY 2013<br><u>Final</u> |
|---|-------------------------|-------------------------|
| Total budgeted resources                                | \$781.4                 | \$734.7                 |
| Less estimated 10 CFR part 170 receipts                 | <u>-\$295.5</u>         | <u>-\$303.8</u>         |
| Net 10 CFR part 171 resources                           | \$486.0                 | \$430.9                 |
| Allocated generic transportation                        | +\$1.3                  | \$1.3                   |
| Fee-relief adjustment/LLW surcharge                     | -\$6.3                  | -\$3.4                  |
| Billing adjustment                                      | <u>-\$ 7.3</u>          | <u>\$0.2</u>            |
| 2 <sup>nd</sup> Billing Adjustment (terminated license) | <u>-\$0.0</u>           | <u>-\$4.6</u>           |
| Total required annual fee recovery                      | \$473.7                 | \$424.2                 |

The decrease in budgetary resources for FY 2013 is primarily due to reduced licensing actions and the completion of three major licensing reviews (Vogtle, Summer and Westinghouse Advanced Passive 1000 (AP 1000)). Consequently, more resources are being applied to the

implementation of the task force recommendations regarding the Fukushima Dai-ichi accident in Japan (“Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (ADAMS Accession No. ML111861807), dated July 12, 2011.

The annual fees for power reactors decrease in FY 2013 due to increased 10 CFR part 170 estimates and an adjustment of \$20.7 million for prior year unbilled invoices under 10 CFR part 170. The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 102 power reactors licensed to operate due to the withdrawal of two operating reactors, Crystal River and Kewaunee which results in annual fee of \$4,159,000 per reactor for FY 2013. The withdrawal also results in a credit of \$4.6 million for the 10 CFR part 171 collections for FY 2013. Additionally, each power reactor licensed to operate would be assessed the FY 2013 spent fuel storage/reactor decommissioning annual fee of \$231,000. The total FY 2013 annual fee is \$4,390,000 for each power reactor licensed to operate. The annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactors in Decommissioning.

For FY 2013, budgeted costs of \$33.4 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

**TABLE XIV - ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL  
STORAGE/REACTOR IN DECOMMISSIONING FEE CLASS**

**[Dollars in millions]**

| <u>Summary Fee Calculations</u>         | FY 2012<br><u>Final</u> | FY 2013<br><u>Final</u> |
|---|-------------------------|-------------------------|
| Total budgeted resources                | \$29.4                  | \$33.4                  |
| Less estimated 10 CFR part 170 receipts | <u>-\$3.6</u>           | <u>-\$5.4</u>           |
| Net 10 CFR part 171 resources           | \$25.8                  | \$28.0                  |
| Allocated generic transportation        | +\$0.7                  | \$0.6                   |
| Fee-relief adjustment                   | -\$0.3                  | -\$0.2                  |
| Billing adjustments                     | <u>-\$0.3</u>           | <u>\$0.0</u>            |
| Total required annual fee recovery      | \$22.9                  | \$28.4                  |

The value of total budgeted resources for this fee class is higher in FY 2013 than in FY 2012 due to rulemaking activities regarding the update of the Waste Confidence rule. The required annual fee recovery amount is divided equally among 123 licensees, resulting in an FY 2013 annual fee of \$231,000 per licensee.

e. Research and Test Reactors (Nonpower Reactors).

Approximately \$330,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2013. Table XV summarizes the annual fee calculation for the research and test reactors for FY 2013. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

**TABLE XV - ANNUAL FEE SUMMARY CALCULATIONS FOR  
RESEARCH AND TEST REACTORS**

**[Dollars in millions]**

| <u>Summary Fee Calculations</u>         | FY 2012<br><u>Final</u> | FY 2013<br><u>Final</u> |
|---|-------------------------|-------------------------|
| Total budgeted resources                | \$1.68                  | \$1.50                  |
| Less estimated 10 CFR part 170 receipts | <u>-\$1.54</u>          | <u>-\$1.19</u>          |
| Net 10 CFR part 171 resources           | \$0.14                  | \$0.30                  |
| Allocated generic transportation        | +\$0.03                 | +\$0.03                 |
| Fee-relief adjustment                   | -\$0.05                 | -\$0.01                 |
| Billing adjustments                     | <u>-\$0.02</u>          | <u>-\$0.00</u>          |
| Total required annual fee recovery      | \$0.13                  | \$0.33                  |

Although research and test reactors received an adjustment of approximately \$112,000 for prior year 10 CFR part 170 unbilled adjustments, the increase in annual fees for research and test reactors from FY 2012 to FY 2013 is primarily due to reduced activity under 10 CFR part 170. The required annual fee recovery amount is divided equally among the four research and test reactors subject to annual fees and results in an FY 2013 annual fee of \$81,600 for each licensee.

f. Rare Earth Facilities.

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budgeted resources are allocated to this fee class, and no annual fee will be published in FY 2013.

g. Materials Users.

For FY 2013, budget costs of \$31.2 million for material users are to be recovered through annual fees assessed to 10 CFR part 30 licensees. Table XVI shows the calculation of the FY 2013 annual fee amount for materials users licensees. The FY 2012 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 1.F., 2.B. through 2.F., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

**TABLE XVI - ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS  
LICENSEES**  
**[Dollars in millions]**

| <u>Summary Fee Calculations</u>         | <u>FY 2012<br/>Final</u> | <u>FY 2013<br/>Final</u> |
|---|--------------------------|--------------------------|
| Total budgeted resources                | \$30.6                   | \$30.7                   |
| Less estimated 10 CFR part 170 receipts | <u>-\$1.6</u>            | <u>-\$1.2</u>            |
| Net 10 CFR part 171 resources           | \$29.0                   | \$29.5                   |
| Allocated generic transportation        | +\$1.5                   | +\$1.5                   |
| Fee-relief adjustment/LLW surcharge     | +\$0.1                   | +\$0.2                   |
| Billing adjustments                     | <u>-\$0.2</u>            | <u>-\$0.0</u>            |
| Total required annual fee recovery      | \$30.4                   | \$31.2                   |

The total required annual fees to be recovered for most materials users licensees increase in FY 2013 mainly for oversight activities and changes resulting from biennial review hours and inspection priorities.

To equitably and fairly allocate the \$31.2 million in FY 2013 budgeted costs to be recovered in annual fees assessed to the approximately 3,000 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users' licenses is developed as follows:

$$\text{Annual fee} = \text{Constant} \times [\text{Application Fee} + (\text{Average Inspection Cost divided by Inspection Priority})] + \text{Inspection Multiplier} \times (\text{Average Inspection Cost divided by Inspection Priority}) + \text{Unique Category Costs}.$$

The constant is the multiple necessary to recover approximately \$22.6 million in general costs (including allocated generic transportation costs) and is 1.52 for FY 2013. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of \$272. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately \$8.2 million in inspection costs, and is 2.3 for FY 2013. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2013, approximately \$153,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human-use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief surplus adjustment of approximately \$175,000 allocated to the materials users fee class (see Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document),

and for certain categories of these licensees, a share of the approximately \$338,000 surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation.

Table XVII shows the calculation of the FY 2013 generic transportation budgeted resources to be recovered through annual fees. The FY 2012 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

**TABLE XVII - ANNUAL FEE SUMMARY CALCULATIONS  
FOR TRANSPORTATION  
[Dollars in millions]**

| <u>Summary Fee Calculations</u>         | <u>FY 2012<br/>Final</u> | <u>FY 2013<br/>Final</u> |
|---|--------------------------|--------------------------|
| Total budgeted resources                | \$9.2                    | \$8.2                    |
| Less estimated 10 CFR part 170 receipts | <u>-\$3.4</u>            | <u>-\$2.7</u>            |
| Net 10 CFR part 171 resources           | \$5.9                    | \$5.5                    |

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71, "Packaging and Transportation of Radioactive Material." The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2013 budgetary resources for generic transportation activities including those to support DOE CoCs is \$5.5 million. The decrease in 10 CFR part 171 resources in FY 2013 is primarily due to decreased budgetary resources for regulatory programs. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (e.g., the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE Transportation Activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if four CoCs benefit the entire research and test reactor class, but only four of 31 research and test reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to research and test reactor annual fees equals  $(4/31)*4$ , or 0.5 CoCs.

**TABLE XVIII - DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES,**

**FY 2013**

**[Dollars in millions]**

| <u>License Fee Class/DOE</u> | <u>Number CoCs<br/>Benefiting Fee<br/>Class or DOE</u> | <u>Percentage<br/>of Total<br/>CoCs</u> | <u>Allocated<br/>Generic<br/>Transportation<br/>Resources</u> |
|------------------------------|--|---|---|
| Total                        | 87.5   | 100.0                                   | \$5.54  |

|  |      |      |        |
|--|------|------|--------|
| DOE  | 20.0 | 22.9 | \$1.27 |
| Operating Power Reactors                   | 20.0 | 22.9 | \$1.27 |
| Spent Fuel Storage/Reactor Decommissioning | 10.0 | 11.4 | \$0.63 |
| Research and Test Reactors                 | 0.5  | 0.6  | \$0.03 |
| Fuel Facilities                            | 13.0 | 14.8 | \$0.82 |
| Materials Users                            | 24.0 | 27.4 | \$1.52 |

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds and does not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee-relief surplus adjustment (see Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), resulting in a total annual fee of \$1,238,000 for FY 2013. The annual fee decreases in FY 2013 are primarily due to reduced budgeted resources for the NRC's transportation activities.

### 3. Small Entity Fees.

Regarding small entity fees, the NRC conducted its 2013 biennial review of the small entity fees to determine if the fees should be changed. The NRC applied the fee methodology developed in FY 2009 that applies a fixed percentage of 39 percent to the prior 2-year weighted average of materials users' fees. This resulted in an upper-tier small entity fee increase from \$2,300 to \$3,500 and a lower-tier fee increase from \$500 to \$800, which is a 52 percent and 60 percent increase, respectively. Implementing this increase would have a disproportionate impact upon the NRC's small licensees compared to other licensees. Therefore, the NRC staff revised the increase to 21 percent for upper-tier fee which is the same limit applied in the FY 2011 biennial review. The NRC staff is amending the upper-tier small entity fee to \$2,800 and

amending the lower-tier small entity fee to \$600 for FY 2013. The NRC staff believes these fees are reasonable and provide relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

#### 4. Administrative Amendments.

This final rule makes certain administrative changes for clarity:

a. § 171.16: Footnote 1 is revised for clarity and deletes the following language, "Licensees paying annual fees under category 1.A.(1) are not subject to the annual fees for categories 1.C. and 1.D. for sealed sources authorized in the license."

b. § 171.16: New Footnote 15 is added for clarity and reads as follows, "Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license."

c. § 171.16: Reference to Footnote 4 is removed and replaced with reference to Footnote 15 in fee categories 1.C. and 1.D. Fee category 1.F. is revised to reference Footnote 15 for clarity.

d. § 171.16(c): The description for small entities is revised to include "10 CFR part 72 licensees," as eligible to apply for small entity status. The staff believes this inclusion remedies the unintended consequence of the consolidation of 10 CFR part 72 licenses under § 171.15 being excluded for treatment as a small business entity for fee purposes.

e. The NRC revises the lower-tier receipts-based threshold of \$450,000 to \$485,000 to reflect approximately the same percentage adjustment as the NRC's upper-tier receipts-based standard adjustment from \$6.5 to \$7 million which was published as a final rule in the *Federal Register* (77 FR 39385) and effective on August 22, 2012.

f. § 171.16: The name for fee category 2.A.(1) includes "deconversion," to reflect the new description and the description for fee category 2.A.(1) is changed to include "or for

deconverting uranium hexafluoride in the production of uranium oxides for disposal,” to capture the deconversion of uranium hexafluoride (UF<sub>6</sub>) into uranium oxides for disposal and commercial sale of the fluoride byproducts from uranium deconversion facilities.

g. § 171.16: The descriptions for fee categories 1.C. and 1.D. are changed; and a new fee category 1.F. is created to address licenses authorizing greater than critical mass as defined by § 70.4, “Critical Mass.” Under 10 CFR part 170, the fee category 1.C. description would include “of less than a critical mass as defined in § 70.4 of this chapter.” The fee category 1.D. description is changed to, “All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass as defined in § 70.4 of this, for which the licensee shall pay the same fees as those under category 1.A.” A new fee category 1.F. reads, “For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter.”

h. § 171.19(d) is revised for clarity and changes “and 3.A. through 9.D.” to “3.A. through 3.F., and 3.H. through 9.D.”

i. § 171.16: Footnote 7 is revised for clarity and deletes the following language, “they are charged an annual fee in other categories while they are licensed to operate,” and adds the following language, “their decommissioning fees are covered by other fees.”

In summary, the NRC is making the following changes to 10 CFR part 171:

1. Uses the NRC’s fee-relief surplus to reduce all licensees’ annual fees, based on their percentage share of the NRC budget;
2. Establishes rebaselined annual fees for FY 2013;
3. Increases the maximum small entity fee from \$2,300 to \$2,800, and the lower-tier fee from \$500 to \$600; and
4. Makes administrative changes to §§ 171.16 and 171.19(d).

#### IV. Plain Writing.

The Plain Writing Act of 2010, (Pub. L. 111-274), requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

#### V. Availability of Documents.

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

| Document   | PDR | Web   | ADAMS Accession |
|--|-----|---|-----------------|
| FY 2013 Work Papers  | X   |   | ML13154A025     |
| Regulatory Flexibility Analysis  | X   |   | ML13067A088     |
| Small Entity Compliance Guide  | X   |   | ML13046A282     |
| NUREG-1100, Volume 28, "Congressional Budget Justification: Fiscal Year 2013" (February 2012 | X   | <a href="http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/">http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1100/</a> |                 |
| NRC Form 526   |     | <a href="http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf">http://www.nrc.gov/reading-rm/doc-collections/forms/nrc526.pdf</a>         |                 |

## **VI. Voluntary Consensus Standards.**

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using these standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover approximately 90 percent of its budget authority in FY 2013, as required by the OBRA-90, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## **VII. Environmental Impact: Categorical Exclusion.**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for this final rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

## **VIII. Paperwork Reduction Act Statement.**

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement, unless the requesting document displays a currently valid Office of Management and Budget control number.

### **IX. Regulatory Analysis.**

Under OBRA-90, as amended, and the AEA, the NRC is required to recover 90 percent of its budget authority, or \$985.6 million in FY 2013. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978, and more fee methodology guidelines through the establishment of 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy in order to ensure that the NRC continues to comply with the statutory requirements for cost recovery in OBRA-90 and the AEA.

In this rulemaking, the NRC continues this long-standing approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this rulemaking.

### **X. Regulatory Flexibility Analysis.**

Section 604 of the Regulatory Flexibility Act requires agencies to perform an analysis that considers the impact of a rulemaking on small entities. The NRC's regulatory flexibility analysis for this final rule is available as indicated in Section V, Availability of Documents, of this document, and a summary is provided in the following paragraphs.

The NRC is required by the OBRA-90, as amended, to recover approximately 90 percent of its FY 2013 budget authority through the assessment of user fees. The OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

The FY 2013 final rule establishes the schedules of fees necessary for the NRC to recover 90 percent of its budget authority for FY 2013. The final rule results in some increased annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreased annual fees charged to others. Licensees affected by these increased fees include those who qualify as small entities under the NRC's size standards in § 2.810.

The NRC prepared a FY 2013 biennial regulatory analysis in accordance with the FY 2001 final rule (66 FR 32467; June 14, 2001). This rule also stated the small entity fees will be reexamined every 2 years and in the same years the NRC conducts the biennial review of fees as required by the Office of Chief Financial Officer Act.

For this final rule, the small entity fees increase to \$2,800 for the maximum upper-tier small entity fee and increase to \$600 for the lower-tier small entity as result of the biennial review which factored in the number of increased hours for application reviews and inspections in the fee calculations. The next small entity biennial review is scheduled for FY 2015.

Additionally, the Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, has prepared the "Small Entity Compliance Guide," which is available as indicated in Section V, Availability of Documents, of this document.

## **XI. Backfitting and Issue Finality.**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

## **XII. Congressional Review Act.**

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801—808), the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

### **List of Subjects**

#### **10 CFR Part 170**

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

#### **10 CFR Part 171**

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

**PART 170 -- FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

1. The authority citation for part 170 continues to read as follows:

**Authority:** Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e), Pub. L. 109-58, 119 Stat.783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

2. Section 170.20 is revised to read as follows:

**§ 170.20 Average cost per professional staff-hour.**

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of \$272 per hour.

3. In § 170.21, the table is revised to read as follows:

**§ 170.21 Schedule of fees for production or utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.**

\* \* \* \* \*

**SCHEDULE OF FACILITY FEES**

**[See footnotes at end of table]**

| <u>Facility categories and type of fees</u>                                      | <u>Fees<sup>1,2</sup></u> |
|--|---------------------------|
| A. Nuclear Power Reactors:   |                           |
| Application for Construction Permit  | Full Cost                 |
| Early Site Permit, Construction Permit, Combined License, Operating License      | Full Cost                 |
| Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals | Full Cost                 |
| Inspections <sup>3</sup>   | Full Cost                 |
| B. Standard Reference Design Review  |                           |
| Preliminary Design Approvals, Final Design Approvals, Certification              | Full Cost                 |
| Amendment, Renewal, Other Approvals  | Full Cost                 |
| C. Test Facility/Research Reactor/Critical Facility:                             |                           |
| Application for Construction Permit  | Full Cost                 |
| Construction Permit, Operating License   | Full Cost                 |
| Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals | Full Cost                 |
| Inspections <sup>3</sup>   | Full Cost                 |
| D. Manufacturing License:  |                           |
| Application for Construction   | Full Cost                 |
| Preliminary Design Approval, Final Design Approval                               | Full Cost                 |
| Amendment Renewal, Other Approvals   | Full Cost                 |
| Inspections <sup>3</sup>   | Full Cost                 |
| E. [Reserved]  |                           |
| F. [Reserved]  |                           |
| G. Other Production or Utilization Facility:                                     |                           |
| Application for Construction Permit  | Full Cost                 |
| Construction Permit, Operating License   | Full Cost                 |
| Amendment, Renewal, Other Approvals  | Full Cost                 |
| Inspections <sup>3</sup>   | Full Cost                 |
| H. Production or Utilization Facility Permanently Closed Down:                   |                           |
| Inspections <sup>3</sup>   | Full Cost                 |

|  |           |
|--|-----------|
| I. Part 55 Reviews<br>Requalification and Replacement Examinations for Reactors Operators  | Full Cost |
| J. Special Projects:<br>Approvals and preapplication/licensing activities  | Full Cost |
| Inspections <sup>3</sup>   | Full Cost |
| Contested hearings on licensing actions directly related to U.S. Government national security initiatives  | Full Cost |
| K. Import and export licenses:<br>Licenses for the import and export only of production or utilization facilities or the export only of components for production or utilization facilities issued under 10 CFR part 110.<br>1. Application for import or export of production or utilization facilities <sup>4</sup> (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).<br>Application -- new license, or amendment; or license exemption request | \$17,700  |
| 2. Application for export of reactor and other components requiring Executive Branch review, for example, those actions under 10 CFR 110.41(a).<br>Application -- new license, or amendment; or license exemption request  | \$9,500   |
| 3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.<br>Application -- new license, or amendment; or license exemption request  | \$4,400   |
| 4. Application for export of facility components and equipment not requiring Commission or Executive Branch review, or obtaining foreign government assurances.<br>Application -- new license, or amendment; or license exemption request  | \$3,300   |
| 5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.<br>Minor amendment to license   | \$1,400   |

<sup>1</sup> Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

<sup>2</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours

expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided.

<sup>3</sup> Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

<sup>4</sup> Imports only of major components for end-use at NRC-licensed reactors are authorized under NRC general import license in 10 CFR 110.27.

4. In § 170.31, the table is revised to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.**

\* \* \* \* \*

**SCHEDULE OF MATERIALS FEES**

**[See footnotes at end of table]**

| <u>Category of materials licenses and type of fees</u> <sup>1</sup>  | <u>Fee</u> <sup>2, 3</sup> |
|--|----------------------------|
| 1. Special nuclear material:   |                            |
| A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.  |                            |
| (a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]  | Full Cost                  |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]   | Full Cost                  |
| (2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.  |                            |
| (a) Facilities with limited operations [Program Code(s): 21310, 21320]   | Full Cost                  |
| (b) Gas centrifuge enrichment demonstration facilities   | Full Cost                  |
| (c) Others, including hot cell facilities  | Full Cost                  |
| B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200] | Full Cost                  |

|   |           |
|---|-----------|
| C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. <sup>4</sup><br>Application [Program Code(s): 22140]  | \$1,300   |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. <sup>4</sup><br>Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]   | \$2,500   |
| E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]  | Full Cost |
| F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter. <sup>4</sup> [Program Code(s): 22155]  | Full Cost |
| 2. Source material:<br>A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code(s): 11400]   | Full Cost |
| (2) Licenses for possession and use of source material in recovery operations such as milling, <i>in-situ</i> recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.<br>(a) Conventional and Heap Leach facilities [Program Code(s): 11100] | Full Cost |
| (b) Basic <i>In Situ</i> Recovery facilities [Program Code(s): 11500]   | Full Cost |
| (c) Expanded <i>In Situ</i> Recovery facilities [Program Code(s): 11510]  | Full Cost |
| (d) <i>In Situ</i> Recovery Resin facilities [Program Code(s): 11550]   | Full Cost |
| (e) Resin Toll Milling facilities [Program Code(s): 11555]  | Full Cost |
| (f) Other facilities [Program Code(s): 11700]   | Full Cost |
| (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and  |           |

|   |           |
|---|-----------|
| disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]   | Full Cost |
| (4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]   | Full Cost |
| (5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]   | Full Cost |
| B. Licenses which authorize the possession, use, and/or installation of source material for shielding.<br>Application [Program Code(s): 11210]  | \$1,200   |
| C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.<br>Application [Program Code(s): 11240]  | \$6,700   |
| D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.<br>Application [Program Codes(s): 11230, 11231]  | \$2,000   |
| E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.<br>Application [Program Code(s): 11710]  | \$2,700   |
| F. All other source material licenses.<br>Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]   | \$2,700   |
| 3. Byproduct material:  |           |
| A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.<br>Application [Program Code(s): 03211, 03212, 03213]  | \$12,700  |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.<br>Application [Program Code(s): 03214, 03215, 22135, 22162]  | \$3,800   |
| C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). |           |

|   |          |
|---|----------|
| Application [Program Code(s): 02500, 02511, 02513]  | \$4,800  |
| D. [Reserved]   | N/A      |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).<br>Application [Program Code(s): 03510, 03520]  | \$3,100  |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.<br>Application [Program Code(s): 03511]   | \$6,400  |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.<br>Application [Program Code(s): 03521]   | \$60,700 |
| H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.<br>Application [Program Code(s): 03254, 03255]  | \$5,000  |
| I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.<br>Application [Program Code(s): 03250, 03251, 03252, 03253, 03256] | \$11,200 |
| J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.<br>Application [Program Code(s): 03240, 03241, 03243]   | \$2,000  |
| K. Licenses issued under subpart B of part 32 of this   |          |

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| chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.<br>Application [Program Code(s): 03242, 03244] | \$1,100 |
| L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.<br>Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]  | \$5,400 |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.<br>Application [Program Code(s): 03620]   | \$3,600 |
| N. Licenses that authorize services for other licensees, except:<br>(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and<br>(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.<br>Application [Program Code(s): 03219, 03225, 03226]   | \$7,200 |
| O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.<br>Application [Program Code(s): 03310, 03320]   | \$3,900 |
| P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.<br>Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130]   | \$2,000 |
| Q. Registration of a device(s) generally licensed under part 31 of this chapter.<br>Registration  | \$300   |
| R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section. <sup>5</sup><br>1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4) or (5) but less than or equal to 10 times the number of items or limits specified.<br>Application [Program Code(s): 02700]  | \$2,500 |
| 2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR  |         |

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| 31.12(a)(4) or (5).<br>Application [Program Code(s): 02710]   | \$2,000   |
| S. Licenses for production of accelerator-produced radionuclides.<br>Application [Program Code(s): 03210]   | \$12,900  |
| 4. Waste disposal and processing:<br>A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101] | Full Cost |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.<br>Application [Program Code(s): 03234]   | \$5,800   |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.<br>Application [Program Code(s): 03232]  | \$4,900   |
| 5. Well logging:<br>A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.<br>Application [Program Code(s): 03110, 03111, 03112]   | \$3,800   |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies.<br>Licensing [Program Code(s): 03113]   | Full Cost |
| 6. Nuclear laundries:<br>A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.<br>Application [Program Code(s): 03218]   | \$21,700  |
| 7. Medical licenses:<br>A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units,   |           |

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| teletherapy devices, or similar beam therapy devices.<br>Application [Program Code(s): 02300, 02310]  | \$8,700 |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.<br>Application [Program Code(s): 02110] | \$8,500 |
| C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.<br>Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]  | \$3,300 |
| 8. Civil defense:<br>A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.<br>Application [Program Code(s): 03710]   | \$2,500 |
| 9. Device, product, or sealed source safety evaluation:<br>A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.<br>Application -- each device   | \$5,300 |
| B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.<br>Application -- each device  | \$8,800 |
| C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.<br>Application -- each source   | \$5,200 |
| D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.<br>Application -- each source  | \$1,030 |
| 10. Transportation of radioactive material:<br>A. Evaluation of casks, packages, and shipping containers.   |         |

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| 1. Spent Fuel, High-Level Waste, and plutonium air packages   | Full Cost |
| 2. Other Casks  | Full Cost |
| B. Quality assurance program approvals issued under part 71 of this chapter.  |           |
| 1. Users and Fabricators.   |           |
| Application   | \$4,100   |
| Inspections   | Full Cost |
| 2. Users.   |           |
| Application   | \$4,100   |
| Inspections   | Full Cost |
| C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).  | Full Cost |
| 11. Review of standardized spent fuel facilities.   | Full Cost |
| 12. Special projects:<br>Including approvals, preapplication/licensing activities, and inspections.<br>Application [Program Code: 25110]  | Full Cost |
| 13. A. Spent fuel storage cask Certificate of Compliance.   | Full Cost |
| B. Inspections related to storage of spent fuel under § 72.210 of this chapter.   | Full Cost |
| 14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs).<br>Application [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325 and 22200]            | Full Cost |
| B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.   | Full Cost |
| 15. Import and Export licenses:<br>Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).  |           |
| A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).<br>Application -- new license, or amendment; or license exemption request  | \$17,700  |
| B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires the NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. |           |

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| Environmental Protection Agency, etc.).<br>Application -- new license, or amendment; or license exemption request   | \$9,500  |
| C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.<br>Application -- new license, or amendment; or license exemption request   | \$4,400  |
| D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances.<br>Application -- new license, or amendment; or license exemption request.   | \$3,300  |
| E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.<br>Minor amendment  | \$1,400  |
| Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).<br><i>Category 1 (Appendix P, 10 CFR Part 110) Exports:</i><br>F. Application for export of appendix P Category 1 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)) and to obtain government-to-government consent for this process. For additional consent see 15.I.<br>Application -- new license, or amendment; or license exemption request | \$15,000 |
| G. Application for export of appendix P Category 1 materials requiring Executive Branch review and to obtain government-to-government consent for this process. For additional consents see 15.I.<br>Application -- new license, or amendment; or license exemption request   | \$8,700  |
| H. Application for export of appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see 15. I.<br>Application -- new license, or amendment; or license exemption request  | \$6,500  |
| I. Requests for each additional government-to-government consent in support of an export license  |          |

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| application or active export license.<br>Application -- new license, or amendment; or license exemption request   | \$270     |
| <i>Category 2 (Appendix P, 10 CFR Part 110) Exports:</i><br>J. Application for export of appendix P Category 2 materials requiring Commission review (e.g. exceptional circumstance review under 10 CFR 110.42(e)(4)).<br>Application -- new license, or amendment; or license exemption request  | \$15,000  |
| K. Applications for export of appendix P Category 2 materials requiring Executive Branch review.<br>Application -- new license, or amendment; or license exemption request  | \$8,700   |
| L. Application for the export of Category 2 materials.<br>Application -- new license, or amendment; or license exemption request  | \$5,400   |
| M. [Reserved]   | N/A       |
| N. [Reserved]   | N/A       |
| O. [Reserved]   | N/A       |
| P. [Reserved]   | N/A       |
| Q. [Reserved]   | N/A       |
| <i>Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):</i><br>R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.<br>Minor amendment | \$1,400   |
| 16. Reciprocity:<br>Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.<br>Application  | \$1,800   |
| 17. Master materials licenses of broad scope issued to Government agencies.<br>Application [Program Code(s): 03614]   | Full Cost |
| 18. U.S. Department of Energy.<br>A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).  | Full Cost |
| B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities.   | Full Cost |

<sup>1</sup>*Types of fees* - Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

<sup>2</sup> Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

<sup>3</sup> Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

<sup>4</sup> Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D., and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

<sup>5</sup> Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

**PART 171 -- ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES  
AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF  
COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS  
AND GOVERNMENT AGENCIES LICENSED BY THE NRC**

5. The authority citation for part 171 continues to read as follows:

**Authority:** Consolidated Omnibus Budget Reconciliation Act sec. 7601 Pub. L. 99-272, as amended by sec. 5601, Pub. L. 100-203 as amended by sec. 3201, Pub. L. 101-239, as amended by sec. 6101, Pub. L. 101-508, as amended by sec. 2903a, Pub. L. 102-486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109-103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504

note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109-58 (42 U.S.C. 2014, 2021, 2021b, 2111).

6. In § 171.15, paragraph (b)(1), paragraph (b)(2) introductory text, paragraph (c)(1), paragraphs (c)(2) introductory text and (d)(1) introductory text, and paragraphs (d)(2), (d)(3), and (e) are revised to read as follows:

**§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.**

\* \* \* \* \*

(b)(1) The FY 2013 annual fee for each operating power reactor which must be collected by September 30, 2013, is \$4,390,000.

(2) The FY 2013 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2013 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2013 base annual fee for operating power reactors are as follows:

\* \* \* \* \*

(c)(1) The FY 2013 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each

independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is \$231,000.

(2) The FY 2013 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and a fee-relief adjustment. The activities comprising the FY 2013 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2013 spent fuel storage/reactor decommissioning rebaselined annual fee are:

\* \* \* \* \*

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2013 fee-relief adjustment are as follows:

\* \* \* \* \*

(2) The total FY 2013 fee-relief adjustment allocated to the operating power reactor class of licenses is a \$5.3 million fee-relief surplus, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2013 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately a \$33,920 fee

relief surplus. This amount is calculated by dividing the total operating power reactor fee-relief surplus adjustment, \$5.3 million, by the number of operating power reactors (102).

(3) The FY 2013 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is a \$243,000 fee-relief surplus. The FY 2013 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is a \$2,000 fee-relief surplus. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2013 annual fees for licensees authorized to operate a research and test (nonpower) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

|                  |          |
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| Research reactor | \$81,600 |
| Test reactor     | \$81,600 |

7. In § 171.16:

a. Revise paragraphs (c), (d), and (e) introductory text to read as follows:

**§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.**

\* \* \* \* \*

(c) A licensee who is required to pay an annual fee under this section, in addition to 10 CFR part 72 licenses, may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due.

The small entity fees are as follows:

|  | Maximum<br>Annual Fee<br>Per Licensed<br><u>Category</u> |
|--|--|
| Small Businesses Not Engaged in Manufacturing<br>(Average gross receipts over last 3 completed fiscal<br>years): |  |
| \$485,000 to \$7 million   | \$2,800  |
| Less than \$485,000  | \$600  |
| Small Not-For-Profit Organizations (Annual Gross<br>Receipts):   |  |
| \$485,000 to \$7 million   | \$2,800  |
| Less than \$485,000  | \$600  |
| Manufacturing entities that have an average of 500 employees<br>or fewer:  |  |
| 35 to 500 employees  | \$2,800  |
| Fewer than 35 employees  | \$600  |
| Small Governmental Jurisdictions (Including publicly<br>supported educational institutions) (Population):        |  |
| 20,000 to 50,000   | \$2,800  |
| Fewer than 20,000  | \$600  |
| Educational Institutions that are not State or Publicly<br>Supported, and have 500 Employees or Fewer            |  |
| 35 to 500 employees  | \$2,800  |
| Fewer than 35 employees  | \$600  |

(d) The FY 2013 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2013 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2013 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

**SCHEDULE OF MATERIALS ANNUAL FEES  
AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC**

**[See footnotes at end of table]**

| <u>Category of materials licenses</u>   | <u>Annual fees</u> <sup>1, 2, 3</sup> |
|---|---------------------------------------|
| 1. Special nuclear material:  |                                       |
| A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.   |                                       |
| (a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]   | \$6,997,000                           |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]  | \$2,633,000                           |
| (2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.   |                                       |
| (a) Facilities with limited operations [Program Code(s): 21310, 21320]  | N/A <sup>5</sup>                      |
| (b) Gas centrifuge enrichment demonstration facilities  | \$1,354,000                           |
| (c) Others, including hot cell facilities   | \$677,000                             |
| B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]  | N/A <sup>11</sup>                     |
| C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. <sup>15</sup> [Program Code(s): 22140]  | \$3,600                               |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. <sup>15</sup> [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310] | \$6,800                               |
| E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]   | \$3,762,000                           |
| F. For special nuclear materials licenses in sealed or unsealed form of greater than a critical mass as defined in § 70.4 of this chapter. <sup>15</sup> [Program Code: 22155]  | \$6,900                               |
| 2. Source material:   |                                       |
| A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. [Program Code: 11400]   | \$1,429,000                           |

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| (2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.<br>(a) Conventional and Heap Leach facilities [Program Code(s): 11100] | \$27,900         |
| (b) Basic <i>In Situ</i> Recovery facilities [Program Code(s): 11500]   | \$35,400         |
| (c) Expanded <i>In Situ</i> Recovery facilities [Program Code(s): 11510]  | \$40,000         |
| (d) <i>In Situ</i> Recovery Resin facilities [Program Code(s): 11550]   | \$0              |
| (e) Resin Toll Milling facilities [Program Code(s): 11555]  | N/A <sup>5</sup> |
| (f) Other facilities <sup>4</sup> [Program Code(s): 11700]  | N/A <sup>5</sup> |
| (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]  | N/A <sup>5</sup> |
| (4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]   | \$15,800         |
| (5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]   | \$4,700          |
| B. Licenses that authorize only the possession, use, and/or installation of source material for shielding. [Program Code: 11210]  | \$3,000          |
| C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240]  | \$11,500         |
| D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter [Program Code(s): 11230 and 11231]  | \$4,800          |
| E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710]  | \$7,200          |
| F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]  | \$8,000          |
| 3. Byproduct material:  |                  |

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| A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]  | \$50,900         |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]  | \$12,700         |
| C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). [Program Code(s): 02500, 02511, 02513] | \$18,800         |
| D. [Reserved]   | N/A <sup>5</sup> |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]  | \$8,700          |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]  | \$12,900         |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]  | \$118,000        |
| H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255]   | \$9,900          |
| I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]   | \$19,200         |
| J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]   | \$4,800          |

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| K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]  | \$3,800           |
| L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]   | \$16,300          |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]  | \$9,300           |
| N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]   | \$16,700          |
| O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]  | \$27,200          |
| P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]   | \$6,400           |
| Q. Registration of devices generally licensed under part 31 of this chapter  | N/A <sup>13</sup> |
| R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: <sup>14</sup><br>1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]   | \$8,800           |
| 2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4) or (5) [Program Code(s): 02710]   | \$8,600           |
| S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]  | \$30,500          |
| 4. Waste disposal and processing:<br>A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101] | N/A <sup>5</sup>  |

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| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]   | \$19,600         |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]  | \$15,600         |
| 5. Well logging:<br>A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]   | \$12,600         |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113]  | N/A <sup>5</sup> |
| 6. Nuclear laundries:<br>A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]   | \$41,000         |
| 7. Medical licenses:<br>A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [Program Code(s): 02300, 02310]  | \$21,600         |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. <sup>9</sup> [Program Code(s): 02110]       | \$32,900         |
| C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. <sup>9</sup> [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160] | \$9,000          |
| 8. Civil defense:<br>A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]   | \$8,800          |
| 9. Device, product, or sealed source safety evaluation:<br>A. Registrations issued for the safety evaluation of devices or products   |                  |

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| containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution   | \$8,000                   |
| B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices  | \$13,300                  |
| C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution   | \$7,900                   |
| D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel  | \$1,600                   |
| 10. Transportation of radioactive material:   |                           |
| A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.   |                           |
| 1. Spent Fuel, High-Level Waste, and plutonium air packages   | N/A <sup>6</sup>          |
| 2. Other Casks  | N/A <sup>6</sup>          |
| B. Quality assurance program approvals issued under part 71 of this chapter.  |                           |
| 1. Users and Fabricators  | N/A <sup>6</sup>          |
| 2. Users  | N/A <sup>6</sup>          |
| C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)   | N/A <sup>6</sup>          |
| 11. Standardized spent fuel facilities  | N/A <sup>6</sup>          |
| 12. Special Projects [Program Code(s): 25110]   | N/A <sup>6</sup>          |
| 13. A. Spent fuel storage cask Certificate of Compliance  | N/A <sup>6</sup>          |
| B. General licenses for storage of spent fuel under 10 CFR 72.210   | N/A <sup>12</sup>         |
| 14. Decommissioning/Reclamation:  |                           |
| A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs) [Program Code(s): 3900, 11900, 21135, 21215, 21240, 21325, 22200] | N/A <sup>7</sup>          |
| B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed  | N/A <sup>7</sup>          |
| 15. Import and Export licenses  | N/A <sup>8</sup>          |
| 16. Reciprocity   | N/A <sup>8</sup>          |
| 17. Master materials licenses of broad scope issued to Government agencies [Program Code(s): 03614]   | \$351,000                 |
| 18. Department of Energy:   |                           |
| A. Certificates of Compliance   | \$1,238,000 <sup>10</sup> |
| B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities  | \$700,000                 |

<sup>1</sup> Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2012, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

<sup>2</sup> Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

<sup>3</sup> Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the *Federal Register* for notice and comment.

<sup>4</sup> Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

<sup>5</sup> There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

<sup>6</sup> Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

<sup>7</sup> Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

<sup>8</sup> No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

<sup>9</sup> Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.B. or 7.C.

<sup>10</sup> This includes Certificates of Compliance issued to the U.S. Department of Energy that are not funded from the Nuclear Waste Fund.

<sup>11</sup> See § 171.15(c).

<sup>12</sup> See § 171.15(c).

<sup>13</sup> No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

<sup>14</sup> Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

<sup>15</sup> Licensees paying annual fees under category 1.A., 1.B., and 1.E. are not subject to the annual fees for categories 1.C., 1.D., and 1.F. for sealed sources authorized in the license.

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section, as reduced by the

appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2013 fee-relief adjustment are as follows:

\* \* \* \* \*

8. In § 171.19, paragraph (d) is revised to read as follows:

**§ 171.19 Payment.**

\* \* \* \* \*

(d) Annual Fees of less than \$100,000 must be paid as billed by the NRC. Materials license annual fees that are less than \$100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C., 1.D., 1.F., 2.A.(2) through 2.A.(5), 2.B. through 2.F., 3.A. through 3.F., and 3.H. through 9.D.

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For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland  
The 21<sup>st</sup> day of June, 2013

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J. E. Dyer  
Chief Financial Officer

am; Publication Date: 07/01/2013]

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